



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 12094251

Date: MAY 20, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a biochemist and molecular biologist, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well-positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner held the position of postdoctoral research fellow in the Department of [REDACTED] Research at the University of [REDACTED] where she was “working on a research project regarding the molecular basis of [REDACTED] diseases.” The Petitioner submitted a letter dated June 6, 2019, describing her background as a researcher. The letter also included information regarding her intention to continue her “research on [REDACTED] function,” and “investigating the role of [REDACTED] function in [REDACTED] and [REDACTED] failure.”

The Director determined that the Petitioner had established the substantial merit and national importance of her proposed endeavor and we agree. The Director also concluded that the Petitioner had established that she was well-positioned to advance the proposed endeavor.⁴ For the reasons discussed below, however, we withdraw the Director’s determination on this issue.

The record includes documentation such as the Petitioner’s curriculum vitae, academic credentials, publications, citations, and letters of recommendation. The Petitioner contends that her education, research experience, recommendation letters from others in the field, citation record, service as a peer reviewer, and research funding demonstrate that she is well positioned to advance her proposed endeavor.

As it relates to the Petitioner’s education, while her degrees render her eligible for the underlying EB- 2 visa classification, she has not shown that her academic accomplishments by themselves are sufficient to demonstrate that she is well-positioned to advance her proposed endeavor. We look to a variety of factors in determining whether a petitioner is well positioned to advance the proposed endeavor and education is merely one factor among many that may contribute to such a finding.

At the time of filing, the Petitioner had “21 peer-reviewed journal articles (11 of them first-authored)” which had “been cited a total of 146 times.” From the information in the record, however, none of the papers appear to highlight or otherwise distinguish the Petitioner’s work from the other cited articles.⁵ Although we listed Dr. Dhanasar’s “publications and other published materials that cite his work” among the documents he presented, our determination that he was well positioned under the second

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ Although the Director concluded that the Petitioner met the first and second prongs of the *Dhanasar* analysis, on appeal, the Petitioner addresses the elements of each of these prongs and asserts a “review of the evidence demonstrating that this finding is well supported by the evidence.”

⁵ For example, the Petitioner provided a number of “notable citations” of her work, none of which included the entire “references” section. In one article, the Petitioner’s paper was one of 173 articles the authors cited.

prong was not based on his citation record. Rather, we found “[t]he petitioner’s education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research.” *Id.* at 893.

The Petitioner also points to her selection as a peer-reviewer for 67 publications. While she provided evidence of her completed review “assignments” and a few emails thanking her for her “participation in the review process” from one of the journals, she did not provide any documents to demonstrate the requirements for selection. Without more, the Petitioner has not demonstrated that the number of citations received by her published articles or her review of articles for publication reflects a level of interest in her work from relevant parties sufficient to meet *Dhanasar*’s second prong.

The Petitioner also submitted a number of reference letters which generally include information regarding her education, research and publications, including citations.⁶ For example,

[REDACTED] an associate professor in the Department of [REDACTED] at the University [REDACTED]. [REDACTED] writes that the Petitioner’s “discovery that applying [REDACTED] in concert with [REDACTED] drugs or [REDACTED] treatments had an even greater effect at [REDACTED] and that it “induced an increase in [REDACTED] cells, which helps to prevent the [REDACTED]” [REDACTED] a research scientist at the University of [REDACTED]; Department of [REDACTED] describes the Petitioner’s “study of a new [REDACTED] derivative called [REDACTED] which she found “has a [REDACTED] effect on several different cell lines and also inhibits [REDACTED] in mice.” She further stated that the research found that [REDACTED] has no negative effects on the body weight and white blood cell levels in test animals,” and that “a reduction in side-effects coupled with the effectiveness of the treatment on a variety of [REDACTED] cell lines indicates that [REDACTED] is an effective [REDACTED] agent.” The Petitioner’s supervisor, [REDACTED] Professor and Chair of the Department of Physiology and Co-Director of the [REDACTED] Institute at the University of [REDACTED], states that the Petitioner:

is tasked with conducting research on the molecular basis for [REDACTED] and its role in diseases with a particular emphasis on diseases that affect the [REDACTED] system and [REDACTED]. At present, [the Petitioner] is studying the role of [the] [REDACTED] gene [REDACTED] in modulating [REDACTED] function and the effects of this modulation on disease. [She] is undoubtedly an ideal candidate for this research, which is why she was selected for this position from among many candidates.

[REDACTED] also indicates that the Petitioner “has contributed to the completion of several of our research objectives.” [REDACTED] explains that the Petitioner is “so well-suited for this position” due to her “documented history of producing excellent research on [REDACTED] function.” While all the letters praise the Petitioner and her research history, they do not provide specific examples indicating that the Petitioner’s findings have affected [REDACTED] therapies or that her research has been sufficiently implemented, utilized, or otherwise affected her field, consistent with the *Dhanasar* analysis.

⁶ While we may not discuss every letter submitted, we have reviewed and considered each one.

The Petitioner also asserts that her “research is funded through a [redacted] grant from the National Institutes of Health” and relies on a letter from her supervisor and a poster presentation at a research retreat for her department at the University of [redacted] as evidence. However, neither the poster, which lists the Petitioner and her supervisor, [redacted] as presenters, nor the letter, identifies the actual recipient of the funding or who was primarily responsible for securing it. In *Dhanasar*, the record established that the petitioner “initiated” or was “the primary award contact on several funded grant proposals” and that he was “the only listed researcher on many of the grants.” *Id.* at 893, n.11. Here, the record does not show that the Petitioner (rather than her supervisor, [redacted] for example) was mainly responsible for obtaining funding for the research projects.

In *Dhanasar*, we explained that:

Beyond his multiple graduate degrees in relevant fields, the petitioner has experience conducting research and developing computational models that support the mission of the United States Department of Defense (“DOD”) to develop air superiority and protection capabilities of U.S. military forces, and that assist in the development of platforms for Earth observation and interplanetary exploration. The petitioner submitted detailed expert letters describing U.S. Government interest and investment in his research, and the record includes documentation that the petitioner played a significant role in projects funded by grants from the National Aeronautics and Space Administration (“NASA”) and the Air Force Research Laboratories (“AFRL”) within DOD. Thus, the significance of the petitioner’s research in his field is corroborated by evidence of peer and government interest in his research, as well as by consistent government funding of the petitioner’s research projects. The petitioner’s education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research.

Here, the record demonstrates that the Petitioner is a very capable and respected biochemist and molecular biologist who has conducted, presented, and published research that is well cited, but does not establish that she is well positioned to advance her proposed research. While research adds information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance the proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, and generation of interest among relevant parties supports such a finding. *Id.* at 890. Here, the Petitioner has not sufficiently demonstrated that her published and presented work has served as an impetus for progress in her field, affected diagnostic or treatment protocols for diseases, generated substantial positive discourse in the industry, or otherwise shown that it constitutes a record of success or progress in advancing research for diseases related to her research. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance her proposed research endeavor, she has not established that she satisfies the second prong of the *Dhanasar* framework.

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor

certification. Here, the Petitioner claims that she is eligible for a waiver due to the impracticality of labor certification, her expertise in the field, and the importance of her research. However, as the Petitioner has not established that she is well positioned to advance her proposed endeavor as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.